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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1940

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No. 686 21  
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GEORGE C. REITZ,

*Appellant.*

*vs.*

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR  
VEHICLES OF THE STATE OF NEW YORK,

*Appellee.*

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**BRIEF FOR APPELLANT**

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✓ HARRY A. ALLAN,  
90 State Street,  
Albany, N. Y.  
*Attorney for Appellant.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

*Appellant,*

against

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,

*Appellee.*

**BRIEF FOR APPELLANT**

**NATURE OF THE APPEAL**

This is an appeal from the final judgment of a Statutory District Court of Three Judges, convened pursuant to Section 266 of the Judicial Code, dismissing the complaint of the plaintiff herein.

The opinion of the Court below is reported officially as follows:

*Reitz v. Mealey*, 34 Fed. Supp. 532.

**JURISDICTION**

Jurisdiction of the Supreme Court of the United States is invoked pursuant to Sections 238 and 266 of the Judi-

cial Code, as amended (U. S. Code, Title 28, Secs. 345, 380), permitting direct appeal from a Statutory District Court of Three Judges from the decision or judgment of said Court granting or denying an injunction based upon the alleged unconstitutionality of a state statute.

### STATEMENT OF CASE

Section 94b of the Vehicle and Traffic Law of New York provides in substance that the license to operate an automobile of a person against whom a judgment has been rendered arising out of a motor vehicle accident shall be suspended if such judgment is not satisfied or discharged within fifteen days after it becomes final, *except by a discharge in bankruptcy*. Such a judgment was obtained against appellant herein by Anson Shafer, and, upon his request, appellant's chauffeur's license was suspended by the defendant pursuant to said section. Appellant was adjudicated a voluntary bankrupt, listing said judgment, and commenced this action to restrain the enforcement of the provisions of Section 94b. The only question raised in said action was the constitutionality of said Section 94b. The action was duly referred, pursuant to Section 266 of the Judicial Code, to a Federal Statutory District Court, convened for the purpose of determining the constitutionality of Section 94b. The Statutory District Court dismissed appellant's complaint and held that Section 94b is constitutional, one judge dissenting.

*Reitz v. Mealey*, 34 Fed. Supp. 532.

### SUMMARY OF ARGUMENT AND ASSIGNMENT OF ERROR

The question presented is the constitutionality of Section 94b of the Vehicle and Traffic Law of the State of New York. Section 94b is fully set forth in the Appendix at the end of this brief. Appellant claims that Section 94b is unconstitutional because it conflicts with

(1) The Bankruptcy Clause of the Constitution of the United States and the Bankruptcy Act of Congress; and

(2) The Fourteenth Amendment to the Constitution of the United States; and

(3) That the Court below erred in dismissing plaintiff's complaint.

## **ARGUMENT**

### **POINT I**

#### **Conflict With Constitution and Bankruptcy Act**

The judgment obtained against appellant is one that is dischargeable in bankruptcy.

Bankruptcy Act, Secs. 14, 17 (U. S. Code, Title 11, Secs. 32, 35).

*In re Wakefield*, 207 Fed. 180, 186.

The exception of a bankruptcy discharge from the provisions of Section 94b as a means of discharging the judgment against appellant furnishes the first and chief ground for this appeal. The Constitution of the United States directs Congress to establish uniform laws of bankruptcy (U. S. Code, Art. 1, Sec. 8, Clause 4). Congress, alone, can prescribe what type of claims shall be excepted from a discharge in bankruptcy. In the aforesaid Section 94b the Legislature of the State of New York has in effect added to Section 17 of the Bankruptcy Act an additional type of claim which is not fully dischargeable in bankruptcy, and appellant is deprived of the full effect of the provisions of the Bankruptcy Act by the restrictions imposed upon him by the New York State Legislature.

*In re Perkins*, 3 Fed. Supp. 697.

In *International Shoe Co. v. Pinkus* (278 U. S. 261), it is said,



"A state is without power to make or enforce any law covering bankruptcies that . . . conflicts with the national bankruptcy laws."

and

"States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations."

Section 94b further provides that it shall be the judgment creditor who instigates the proceeding out of which the suspension of appellant's license becomes effective. Appellant's license would remain in force forever were it not for intervention by the creditor. At his request suspension of the license is mandatory.

*Matter of Jones v. Harnett*, 247 App. Div. 7, 11;  
aff'g 271 N. Y. 626; reargument denied, 272  
N. Y. 510.

As against a bankrupt the section has placed in the hands of a particular type of creditor a potent weapon, and favored him with a preference to enable him to collect his claim, again not sanctioned by Congress.

Further, the section makes an unlawful delegation of power to an unknown person to command the appellee, a State officer, to start or stop the operation of Section 94b, and have appellant's license suspended or returned for a limited period or permanently, all in the sole discretion of said creditor. Appellee thus becomes the agent of the creditor, the character or motives of whom he cannot question, to assist the creditor in the enforcement and collection of his claim, notwithstanding the discharge of the debt in bankruptcy, thus negating any purpose to the section except to favor that creditor. No power is given to the defendant Commissioner to act of his own volition under the section, but he must obey the command of the creditor.

*Matter of Jones v. Harnett* (supra).

The purpose of the Bankruptcy Act is to rehabilitate the debtor and to permit him to absolve himself from all the debts which Congress has said are dischargeable.

*Kalb v. Feuerstein*, 308 U. S. 443.

The effect of the enforcement of Section 94b is to deprive the appellant herein, a truck driver, of his means of livelihood for three years until he has paid a debt that may have already been discharged in bankruptcy because the State Legislature has expressly decreed that the effect of such a debt survives its discharge in bankruptcy. Rehabilitation of the debtor is thus prevented.

The Constitution gives to Congress the right to establish uniform laws on the subject of bankruptcy throughout the United States. How can bankruptcy laws remain uniform if one state has the right to deprive a person, possibly not even a resident of its state, of the protection of a discharge in bankruptcy provided for by the Constitution and Congress?

Research discloses that up to 1933 thirteen states had statutes similar to Section 94b, and yet New York State was the only state in which a discharge in bankruptcy was specifically excepted.

See

43 Yale Law Journal, 344; 47 Harvard Law Review, 870; 39 Michigan Law Review, 645; 8 Chicago Law Review, 326.

In *Ellis v. Rudy* (171 Md. 281), the Court considered a similar statute in an action for mandamus to compel defendant, the Commissioner of Motor Vehicles of Maryland, to reissue petitioner's suspended operator's license. The statute of Maryland in effect at that time was substantially similar to the New York statute in question, but the words "except by a discharge in bankruptcy" were omitted.

The Maryland Court granted mandamus to the plaintiff, a bankrupt, on the ground that the discharge of the plain-

tiff in bankruptcy operated to discharge the debt, pointing out that the Maryland statute specifically omitted the above quoted words, and stated the rule to be that the National Bankruptcy Act would prevail in any conflict that might arise with the statutes of the several states if the latter should impair the function of the Bankruptcy Act in the relief of debtors to such an extent as to defeat the purpose of the Act. The Court also said,

“With these subsisting legal relations and their ensuing results kept in mind, it is clear that the purpose of the Bankruptcy Act is frustrated by the provisions of Section 187b of Article 56, if the release of the bankrupt of all indebtedness under the judgment mentioned is not a stay, satisfaction, or discharge of the judgment in personam within the meaning of Article 56. If this were not the intention of the General Assembly, an irreconcilable conflict would arise between the federal and state enactments. The creditor who cannot enforce the debt because of the discharge in bankruptcy is given, so the argument runs, the power to coerce its payment in whole or in part.”

The crux of this appeal can be said to hinge upon the fact that the statute is designed to aid the creditor in collecting his judgment and has been expressly so interpreted. The statute, read as a whole, particularly since amended, clearly shows a definite trend in this direction. The original statutes might have been considered an exercise of police power to protect travellers on the highway, but it is inconceivable that the Legislature of the State of New York intends the operation of a police measure to be under the exclusive control of a creditor of the person against whom the statute is aimed.

That the purpose of the section is to give aid to the creditor, and that its provisions are mandatory when insisted upon by the creditor, clearly appears from the interpretation thereof by the New York State Courts.

In *Matter of Jones v. Harnett* (247 App. Div. [N. Y.], at p. 11), the Court said,

"The purpose of the Legislature in enacting Section 94b was to give some aid to unfortunate people who frequently are maimed and disabled as the result of negligent and careless operation of a motor vehicle. The provisions of Section 94b are mandatory and must be given full force and effect."

Mandamus was granted against the Commissioner of Motor Vehicles in that case, compelling the suspension of the license of the judgment debtor. This decision was affirmed by the New York Court of Appeals without opinion (271 N. Y. 626; reargument denied, 272 N. Y. 510).

How the Court can reconcile these mandatory provisions of Section 94b, effectually designed to aid a particular type of creditor, with the right of a bankrupt to obtain the full discharge of his obligations contemplated by the Constitution and the Bankruptcy Act is not readily apparent. Hardship may be imposed upon someone. Is it for the New York State Legislature to say that Congress cannot assist him whom the Constitution has said must be aided? Congress has amended the Bankruptcy Act since automobile negligence actions have become so numerous and as yet has not seen fit to except this type of claim from Section 17 of the Act (52 U. S. Stat. at Large, 851), and it is submitted that where state legislation conflicts with an Act of Congress on a subject over which Congress has exclusive jurisdiction, the latter must prevail.

In *International Shoe Co. v. Pinkus* (278 U. S. 261), the Court said,

"The power of Congress to establish uniform law on the subject of bankruptcies . . . is unrestricted and paramount . . . The purpose to exclude state action . . . may be manifested without express declaration . . . In respect to bankruptcies the in-

tention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation."

Legislation of Congress, if constitutional, must necessarily supersede all state legislation on the same subject.

*Prigg v. Commonwealth*, 16 Pet. 539, 617, 618;  
*Northern Pac. Ry. Co. v. Washington*, 222  
 U. S. 370, 378; *Eric R. R. Co. v. New York*,  
 233 U. S. 671, 681.

In the last cited case it was held that where Congress acts on a matter within its exclusive jurisdiction there is no division in the field of legislation and the legislating power of a state ceases to exist when Congress manifests its constitutional authority in regard to such matters.

See *Kalb v. Feuerstein* (308 U. S. 433), as indicating the extent to which the Court will go to effectuate the expressed intention of Congress to aid a bankrupt.

## POINT II

### Conflict With Fourteenth Amendment

Section 94b of the Vehicle and Traffic Law of the State of New York deprives appellant of his property without due process of law by subjecting appellant to additional burden and expense due to a discharged judgment in bankruptcy.

By permitting the remedy of the creditor to survive the discharge of the debtor in bankruptcy, and by placing in the hands of a creditor the entire motivating force of a statute allegedly enacted as an exercise of the police power reserved to the state, the appellant is deprived of his property, to wit, the right to drive an automobile on the highways of the State of New York and elsewhere, without due process of law.

No state shall abridge the privileges and immunities of a citizen of the United States (U. S. Const., 14th Amendment).

That a person shall be entitled to a discharge in bankruptcy is a privilege guaranteed to him by the Constitution and that he shall remain immune from the effect of claims discharged in bankruptcy, pursuant to that Act, is equally forceful, and the exception of a discharge in bankruptcy from Section 94b deprives appellant of these privileges and immunities.

Can a state expressly nullify the effect of the Constitution and Acts of Congress under the guise of the exercise of a police power?

A bankruptcy discharge may be pleaded as a bar to any action on a dischargeable debt and to any remedy which the creditor has to enforce payment thereon.

*In re Hicks*, 133 Fed. 739.

Should it be claimed that a bankruptcy discharge is not a satisfaction of the claim but only a bar to creditor's civil remedy, it may be seen from the statute that creditor's remedy under Section 94b survives the discharge in bankruptcy and the rehabilitation of the debtor contemplated by the Bankruptcy Act is prevented.

By Section 94b, in order to avail himself of the right to drive an automobile, his only means of livelihood, appellant must now, despite the discharge in bankruptcy, pay the judgment and furnish a financial responsibility bond not required of other drivers, thus discriminating against appellant and abridging his privileges and immunities as a citizen of the United States and the guaranties provided for him by the Constitution are set at naught.

### CONCLUSION

For the foregoing reasons appellant respectfully contends that the provisions of Section 94b of the Vehicle and

Traffic Law of the State of New York are unconstitutional and void and the judgment of the Court below should be reversed and injunction should issue restraining the appellee from enforcing against appellant the provisions of Section 94b.

Respectfully submitted,

HARRY A. ALLAN,

*Attorney for Appellant.*

Office and Post-Office Address, 90 State Street,  
Albany, N. Y.

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#### APPENDIX

New York State Vehicle and Traffic Law, Section 94b (New York Laws of 1929, Chapter 695, as Last Amended by Laws of 1939, Chapter 618)

SECTION 94b. *Failure to satisfy judgments; revocation of licenses and security.* The operator's or chauffeur's license, and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which an appeal might have been perfected or by final affirmance on appeal, rendered against him by court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership, maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by



the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise provided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four of this chapter for future accidents. Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or a transcript thereof. In the event the defendant is a non-resident it shall be the duty of the commissioner to transmit to the commissioner of motor vehicles or other officer having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defend-



ant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

(1) when five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operating any motor vehicle in this state and the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied

or discharged as herein provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, nineteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective.